

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.6.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.776 of 2002

M/s.Hindustan Petroleum Corporation Ltd.
Having its Regional Office at
III Floor, A.P.Arcade
(Singapore Plaza)
333 Cross cut road
Coimbatore 12

.. Petitioner

vs.

1.Tayarammal
2.Tmt.Rajini
3.Tmt.Anuradha

.. Respondents

Revision Petition filed against the order dated 5.10.2001, made in C.M.A.No.78/2000 on the file of the Principal District Judge, Coimbatore, confirming the order made in I.A.No.409/94 in O.S.No.110/1986 dated 14.3.2000, on the file of the III Addl. Sub-Judge, Coimbatore.

For Petitioner : Mr.V.Girish Kumar
For Respondents : Mr.T.R.Rajaraman

ORDER:

The defendant/Hindustan Petroleum Corporation in O.S.No.110/1986 is the revision petitioner.

2. O.S.No.110/86 was filed by the plaintiff against the defendant-corporation for a judgment and decree directing the defendant-corporation to deliver possession to the plaintiff of the plaint schedule property, namely, land situated at Coimbatore bearing New Town Survey No.932 admeasuring 146 ft. x 146 ft. x 105 feet and also for other reliefs.

3. The defendant-corporation filed I.A.No.257/1986 under Sec.9 of the Tamil Nadu City Tenants Protection Act, 1921 (hereinafter called 'the Act') praying for an order that the plaintiff be directed to sell for a price to be fixed by the court for the suit schedule land. This I.A.No.257/86 was allowed on 6.4.1994 and thereafter the

defendant/corporation filed I.A.No.409/1994 praying for deciding the market value of the suit schedule property. When the suit was pending, the plaintiff passed away and respondents 2 and 3 were brought on record before this court as legal heirs of the deceased plaintiff. The Legal Representatives of the deceased plaintiff filed a memo in I.A.No.409/94 stating that they have no objection at all for fixing the market value of the suit schedule property.

4. The trial court appointed an advocate-commissioner for fixing the market value of the property and on the basis of the evidence, fixed the market value of the suit schedule property at 91,52,722.30.

5. Aggrieved by the market value fixed by the trial court, the defendant-corporation filed an appeal before the Principal District Judge, Coimbatore in C.M.A.No.78/2000 and the appellate court by order dated 5.10.2001 dismissed the appeal, thereby, confirming the order passed by the trial court dated 14.3.2000. Challenging the order of the appellate court, the above Civil Revision Petition has been filed by the petitioner-corporation.

6. Learned counsel for the revision petitioner/corporation submitted that under Sec.9(1)(b) of the Act, the court shall fix the price of the land and the price fixed shall be the average market value of the three years immediately preceding the date of the order. He further submitted that the petitioner-corporation marked Exs.A1 and A2, namely, the sale deeds dated 29.1.1992 and 2.3.92 respectively and as per Sec.9(1)(b) of the Act, these two documents alone should have been taken into consideration for deciding the market value. According to the learned counsel, both the courts below erred in law in rejecting these two documents and fixing the market value on the basis of the guideline value which is contrary to Sec.9(1)(b) of the Act. He relied on the judgment of this court reported in (2006)2 M.L.J. 606 (Sarangapani, V. (deceased) v. Collector of Thanjavur) for the proposition that non-observance of the procedures under the Act and Rules violate the whole proceedings.

7. Per contra, learned counsel for the respondents submitted that the courts below have correctly fixed the market value of the property and the reasons given by both the courts below for rejecting Exs.A1 and A2 are reasonable and that cannot be questioned by the revision petitioner before this court. He relied on the judgment of this court reported in 1997(II) CTC 481 (Rohini S.K. v. Hindustan Petroleum Corporation Ltd.) in support of his contentions.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondents. I have also gone through the documents filed by them and the judgments referred to by them.

9. The short point for consideration in the revision petition is

whether the courts below erred in law in rejecting Exs.A1 and A2 in deciding the market value of the property by relying on the guideline value and the location of the property.

10. It was admitted by P.W.1 the Senior Sales Manager of the petitioner-corporation in his cross-examination that Exs.A1 and A2 relate to the properties which are undivided and impartible and Ex.A1 is for an undivided share of 0.320/36 and Ex.A2 is for an undivided share of 0.185/36. Whereas the total extent of the suit schedule property is 16.87 cents. Therefore the trial court has rightly held that the two sale deeds cannot be the basis for deciding the market value of the larger extent of 16.87 cents property.

11. The appellate Judge has gone into these aspects in detail and has rightly held that Exs.A1 and A2 relate to fraction of the share wherein buildings are constructed and therefore rejected the said Exs.A1 and A2.

12. I am in entire agreement with the findings of the courts below in rejecting Exs.A1 and A2 for the reason that such fraction of share in the property which cannot be enjoyed fully cannot be the basis for deciding the market value of a larger extent of property which can be enjoyed more freely and conveniently without any impediments.

13. It is true that Sec.9(1)(b) of the Act stipulates that fixing price by the courts below shall be the average market value of immediately preceding the date of the order. It is not disputed that excepting Exs.A1 and A2 no other sale deeds were available nor filed during the relevant period. In such circumstances, both the courts below have correctly decided the market value of the suit schedule property on the basis of the guideline value and also on the basis of the prime business locality of the industrial city, Coimbatore.

14. This court in 1997(II) CTC 481 (supra) fixed market value of the property in question taking note of the Government guideline value and the prime business locality of the property in the absence of availability of the average market value of the property for the three years immediately preceding the date of the order. Following the above judgment, I am of the view that both the courts below have correctly arrived at the market value of the suit schedule property and I do not find any infirmity nor illegality in the orders passed by the courts below.

15. In the result, the Civil Revision Petition is dismissed. No costs. C.M.P.Nos.7838 and 9599 of 2002 are also dismissed.

16. In C.M.P.No.10141/2004, the Regional Manager of the petitioner-corporation filed an affidavit stating that the corporation has deposited 75% of the value of the land fixed by the courts below,

in compliance with the interim orders of this court dated 9.12.2003 in C.M.P.No.9599/2002. Therefore, the petitioner corporation is directed to deposit the balance 25% of the value of the land fixed by the courts below within a period of three months from today.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sks

To

1.The Principal District Judge, Coimbatore.

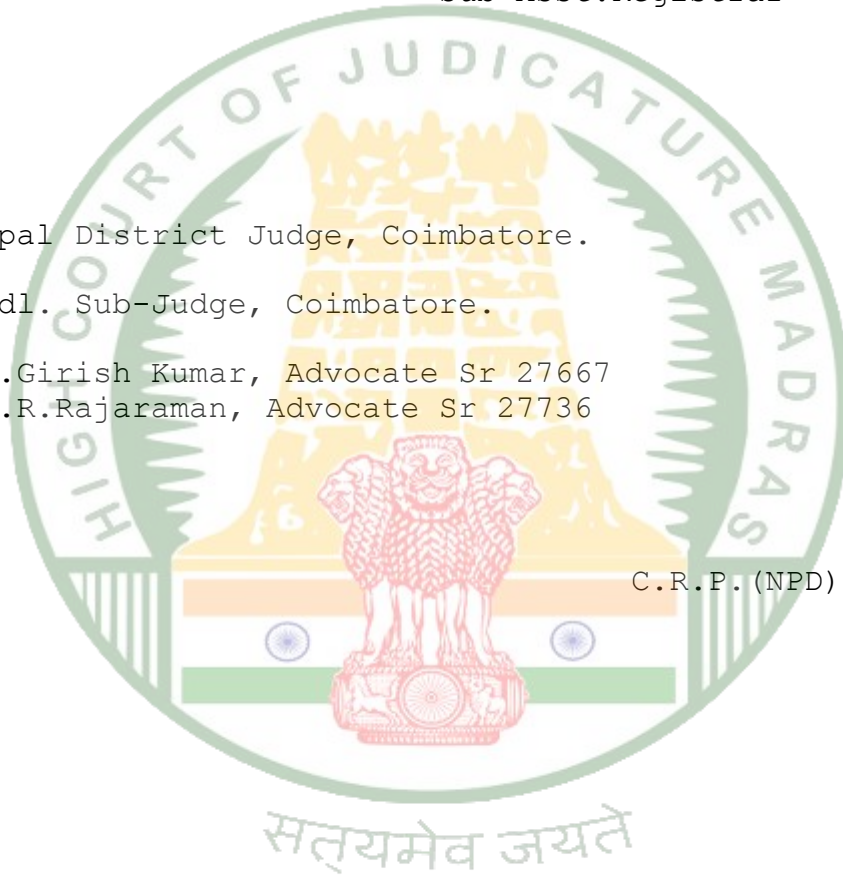
2.The III Addl. Sub-Judge, Coimbatore.

+1cc to Mr.V.Girish Kumar, Advocate Sr 27667

+1cc to Mr.T.R.Rajaraman, Advocate Sr 27736

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km/12.7.

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